

SECOND REGULAR SESSION

SENATE BILL NO. 996

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHIELDS.

Pre-filed January 6, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

3552S.01I

AN ACT

To repeal section 570.223, RSMo, and to enact in lieu thereof two new sections relating to identity theft, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 570.223, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 570.223 and 570.224, to read as follows:

570.223. 1. A person commits the crime of identity theft if he **or she** knowingly and with the intent to deceive or defraud obtains, possesses, [transfers,] uses, or attempts to obtain, [transfer] or use, one or more means of identification not lawfully issued for his **or her** use.

2. [Identity theft is punishable by up to six months in jail for the first offense; up to one year in jail for the second offense; and one to five years imprisonment for the third or subsequent offense.] **The term "means of identification" as used in this section includes, but is not limited to, the following:**

- (1) **Social Security numbers;**
- (2) **Drivers license numbers;**
- (3) **Checking account numbers;**
- (4) **Savings account numbers;**
- (5) **Credit card numbers;**
- (6) **Debit card numbers;**
- (7) **Personal identification (PIN) code;**
- (8) **Electronic identification numbers;**
- (9) **Digital signatures;**
- (10) **Any other numbers or information that can be used to access a person's financial resources;**

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

- (11) Biometric data;
- (12) Fingerprints;
- (13) Passwords; or
- (14) Parent's legal surname prior to marriage.

3. A person found guilty of identity theft shall be punished as follows:

(1) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property not exceeding five hundred dollars in value is a class A misdemeanor;

(2) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding five hundred dollars and not exceeding one thousand dollars in value is a class D felony;

(3) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one thousand dollars and not exceeding ten thousand dollars in value is a class C felony;

(4) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding ten thousand dollars and not exceeding one hundred thousand dollars in value is a class B felony;

(5) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one hundred thousand dollars in value is a class A felony.

4. In addition to the provisions of subsection [2] 3 of this section, the court may order that the defendant make restitution to any victim of the offense. Restitution may include payment for any costs, including attorney fees, incurred by the victim:

- (1) In clearing the credit history or credit rating of the victim; and
- (2) In connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising from the actions of the defendant.

5. In addition to the criminal penalties in subsections 3 and 4 of this section, any person who commits an act made unlawful by subsection 1 of this section shall be liable to the person to whom the identifying information belonged for civil damages of up to five thousand dollars for each incident, or three times the amount of actual damages, whichever amount is greater. A person damaged as set forth in subsection 1 of this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of subsection 1 of this section. The court, in an action brought under this subsection, may award reasonable attorneys' fees to the prevailing party.

6. If the identifying information of a deceased person is used in a manner made unlawful by subsection 1 of this section, the deceased person's estate shall have the right to recover damages pursuant to subsection 5 of this section.

7. The venue for any civil action brought pursuant to this section shall be the county in which the plaintiff resides or any county in which any part of the alleged violation of subsection 1 of this section took place, regardless of whether the defendant was ever actually present in that county. Civil actions under this section must be brought within three years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

8. Civil action pursuant to this section does not depend on whether a criminal prosecution has been or will be instituted for the acts that are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

9. This section shall not apply when:

(1) A person obtains the identity of another person to misrepresent his or her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or another privilege denied to minors;

(2) A person obtains credit information in the course of a bona fide consumer or commercial transaction;

(3) A person exercises, in good faith, a security interest or right of offset by a creditor or financial institution;

(4) A person complies, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so.

10. Notwithstanding the provisions of subdivision (1) of subsection 3 of this section, every person who has previously pled guilty to or been found guilty of identity theft, and who subsequently pleads guilty to or is found guilty of identity theft of credit, money, goods, services, or other property not exceeding five hundred dollars in value is guilty of a class D felony and shall be punished accordingly.

11. The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes, but is not limited to market value within the community, actual value, or replacement value.

12. If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

13. In a criminal proceeding pursuant to this section, venue will be proper

in any county where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

570.224. 1. A person commits the crime of trafficking in stolen identities when such person manufactures, sells, transfers, purchases, or possesses, with intent to manufacture, sell, transfer, or purchase identification documents or identifying information, for the purpose of committing identity theft.

2. Possession of five or more identification documents of the same person, or possession of identifying information of five or more separate persons, shall be evidence that the identities are possessed with intent to manufacture, sell, transfer, or purchase identification documents or identifying information for the purpose of committing identity theft. In determining possession of five or more identification documents of the same person, or possession of identifying information of five or more separate persons for the purposes of evidence pursuant to this subsection, the following do not apply:

- (1) The possession of his or her own identification documents;
- (2) The possession of the identification documents of a person who has consented to the person at issue possessing his or her identification documents.

3. Trafficking in stolen identities is a class B felony.

Bill

Copy